

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42454; File No. SR-CHX-00-01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Amend its Rules Relating to the Filing of FOCUS Reports

February 24, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 31, 2000, the Chicago Stock Exchange, Inc. (the "CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 16, 2000, the Exchange filed with the Commission Amendment No. 1, designating the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to accelerate the operative date of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to codify the CHX requirement that certain financial and operational reports be filed with the Exchange electronically, utilizing software provided by the Exchange for this purpose. Specifically, the CHX proposed to add Interpretation and Policy .03 to Article XI, Rule 4 of the Exchange's rules. The text of the

proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's rules currently require members and member organizations to file with the Exchange, or to arrange for the timely submission to their designated examining authority ("DEA"), financial and operational reports ("FOCUS" Reports) pursuant to the provisions of Article XI, Rule 3 of the CHX Rules.⁴

In 1999, the Exchange licensed software, and provided it to those CHX members for which the CHX acts as the DEA to permit these members to file their monthly and quarterly FOCUS Reports electronically. Specifically, the Exchange licensed the use of the WINJAMMER™ software developed by the Chicago Mercantile Exchange. Members install the software on a personal computer and enter the required FOCUS Report information. Members then send this information to the Exchange as a password-protected attachment to an e-mail message. The program contains an additional encryption tool to allow the Exchange to verify the authenticity of the sender. The Exchange believes that these precautions provide adequate protection to Exchange members in their filing of FOCUS Reports.⁵

Because these electronically-filed reports are much easier to file and maintain, most member firms immediately chose to file their FOCUS Reports electronically.⁶ The CHX is

proposing this rule change to require that FOCUS Reports be filed electronically by all members for which the CHX acts as the DEA, to take advantage of the increased efficiency and the decreased errors associated with electronic filing. The proposed rule change would require the electronic filing of FOCUS beginning with the January 2000 FOCUS Reports, which are due on or before February 24, 2000. The Exchange represents that all members affected by this change have been notified that electronic filing of FOCUS Reports will be required.⁷ Because the Exchange has provided affected members with the necessary software and systems support to commence electronic filing, the Exchange believes that no affected member or member organization will sustain any burden as a result of this requirement. To the contrary, the Exchange believes that electronic filing of FOCUS Reports constitutes a long-awaited convenience.

2. Statutory Basis

For these reasons, the Exchange believes the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁸ In particular, the Exchange believes that the proposed rule is consistent with Section 6(b)(5) of the Act/⁹ in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, the protect investors and the public interest.

that filed their December 1999 FOCUS Reports manually. Therefore, 14 members (17%) of the CHX would be affected by this proposed rule change. Voice Mail Message from Ellen Neely, Vice President and General Counsel, CHX, to Melinda Diller, Attorney, Division of Market Regulation, Commission, on February 14, 2000.

⁷ The Exchange represented to the Commission that a memo was sent to all firms for which the CHX acts as DEA on October 22, 1999, detailing the licensing agreement for the software and stating that the Exchange was proposing to make electronic filing a requirement beginning with the January 2000 FOCUS Reports. The Exchange also represented that it subsequently reiterated the proposed change through telephone conversations the Exchange conducted with the members affected by the change and during this inspections and testing of the software. Telephone conversation between Ellen J. Neeley, Vice President and General Counsel, CHX, and Melinda R. Diller, Attorney, Division of Market Regulation, Commission, on February 17, 2000.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange has represented that the proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on the competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Commission is waiving the five business day notice requirement as permitted by Rule 19b-4(f)(6) under the Act. *Id.* The Commission notes that the Exchange has requested that the Commission accelerate the operative date of the rule change to permit the Exchange to apply it to the January FOCUS Reports, which are due on or before February 24, 2000. Amendment No. 1 also confirmed information about security-related protections built into the software system. See Letter from Ellen Neely, Vice President and General Counsel, CHX, to Melinda Diller, Attorney, Division of Market Regulation ("Division"), Commission dated February 15, 2000 ("Amendment No. 1").

⁴ See 17 CFR 240.17a-5.

⁵ See Amendment No. 1, *supra* note 3.

⁶ The Exchange represents that for the month of December 1999, 82 members filed FOCUS Reports with the CHX. Of those 82 members, 64 (78%) filed electronically, 18 (22%) filed manually. However, CHX is no longer the DEA for 4 of those members

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹ Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, (3) by its terms does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, and (4) the Commission is waiving the required written notice of intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

The Commission has determined, consistent with the protection of investors and the public interest, to make the proposed rule change operative upon filing, pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii).¹⁴ Under Rule 19b-4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.¹⁵ The Commission believes that it is consistent with the protection of investors and the public interest to make the proposed rule change operative upon filing because: (1) Members were notified in October that the Exchange would propose that the electronic filing requirement become effective beginning with the filing of the January 2000 FOCUS Reports, (2) the

Exchange provided the necessary software for electronic filing, and (3) the purpose of the electronic filing requirement is to facilitate the filing process for members.

At any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁶

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the amended proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-00-01 and should be submitted by March 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42452; File No. SR-NASD-99-41]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Opening of Day-Trading Accounts

February 23, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 18, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 1 to the proposed rule change, File No. SR-NASD-99-41, as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The NASD submitted the proposed rule change to the Commission on August 20, 1999, which was published in the **Federal Register** on September 21, 1999 ("Original Notice").³ The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As described in the Original Notice, NASD Regulation is proposing to amend the 2300 Series of the Rules of the NASD to include new Rule 2360 and Rule 2361 regarding the opening of day-trading accounts. Below is the text of the proposed rule change, as amended. Proposed new language from Amendment No. 1 is in *italics*. Proposed deletions from the language proposed in the Original Notice is in [brackets].

Rule 2360. Approval Procedures for Day-Trading Accounts

(a) No member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer, unless, prior to opening the account, the member has furnished to the customer the risk disclosure statement set forth in Rule 2361 and has:

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41432 (September 14, 1999), 64 FR 51165.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ *Id.*

¹⁶ In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 17 CFR 200.30-3(a)(12).